

S.N: 09/972,575
Art Unit 3727
Atty/Dkt PP5.78(a)CVL

REMARKS

Claims 1, 2, 4, 6-9, 11, 13-18 and 28-33 were pending in the application prior to the current response. Claims 1, 7 and 8 have been amended herein. Claims 6 and 13 have been canceled. Claims 2, 4, 9, 11, 14-18 and 28-33 remain in the application unchanged by this amendment. Accordingly, after entry of this amendment, claims 1, 2, 4, 7-9, 11, 14-18 and 28-33 will be pending in the application. Reexamination and reconsideration are requested.

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

**I. Rejection of Claims 1, 2, 4, 7-9 and 11 Under 35 U.S.C. §112,
Second Paragraph**

Claims 1, 2, 4, 7-9 and 11 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Reexamination and reconsideration of the Examiner's rejection are requested.

With respect to independent claims 1 and 8, the Examiner indicates that the "opening structure to enable the product to be dispensed" is essential structure and, thus, must be recited in the claims.

Applicants respectfully disagree with the Examiner's position and assert that the opening structure is *not* essential structure. Nowhere in applicants' disclosure is it suggested (either explicitly or implicitly) that the opening is intended to represent "essential structure".

Applicants have, however, in an effort to appease the Examiner and advance the application to early allowance, amended independent claims 1 and 8 herein to now recite "a dispensing opening". Accordingly, the Examiner's rejection is believed to be addressed.

It is noted that other minor amendments have been made to claims 1, 7 and 8 to improve the clarity of the claim language.

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

II. Rejection of Claims 1, 2, 4, 7-9 and 11 Under 35 U.S.C. §103(a)

Claims 1, 2, 4, 7-9 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fleming (U.S. 2,583,211) in view of Brooks (U.S. 2,434,756), or in the alternative, over Fleming in view of Brooks and Kalajian (U.S. 3,259,297). Reexamination and reconsideration of the Examiner's rejection are requested.

Claims 1, 2, 4 and 7

Claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a dispensing opening;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said container to an open condition, in which product can be dispensed from said container through said dispensing opening, by applying an opening force to said lid, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said container to a closed condition by applying a closing force to said lid;

releasably retaining said container in said closed condition by

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

engaging at least a portion of said panel with at least a portion of said wall;

wherein said container further comprises a sheet of material covering said hole while said container is in said open condition;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and

wherein, said engaging at least a portion of said panel with at least a portion of said wall comprises engaging said hinge portion with said at least a portion of said wall.

Claim 1, as amended, recites, for example, the following:

providing ... a dispensing opening;

...

moving said container to an open condition, in which product can be dispensed from said container through said dispensing opening, by applying an opening force to said lid, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

...

wherein said container further comprises a sheet of

S.N. 09/072,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

material covering said hole while said container is in said open condition;

The Examiner suggests that it would be obvious, in view of Brooks, to provide a sheet of material covering the Fleming opening.

Applicants' claim 1, however, now recites both a hole and a dispensing opening and that the hole is covered with a sheet of material "while said container is in said open condition". Claim 1 further recites that the open condition is one in which "product can be dispensed from said container through said dispensing opening".

The modification to Fleming suggested by the Examiner would result, at best, in a sheet of material covering the Fleming dispensing opening. In this condition, however, the Fleming container would not be in an "open condition" as defined in applicants' claim 1, i.e., a condition in which "product can be dispensed through said dispensing opening".

Accordingly, the combination of references proposed by the Examiner fails to meet all of the limitations of claim 1.

The Examiner further asserts, in the alternative, that the further teaching of Kalajian can be applied to the combination of Fleming and Brooks discussed above to render applicants' claim 1 obvious. Applicants respectfully disagree with this position for at least the reasons set forth below.

The combination of the Fleming, Brooks and Kalajian references proposed by the Examiner would presumably result in a container as shown in Fleming having a sheet of material covering the dispensing opening and further having a secondary opening through which a straw can be inserted

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

(as shown in Kalajian). As noted above, however, claim 1, as amended, recites the following:

moving said container to an open condition, in which product can be dispensed from said container through said dispensing opening, by applying an opening force to said lid, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

Claim 1, thus, recites that the opening force which causes the container to move to the open condition also causes the hole to be formed in the wall. In the Kalajian device, on the other hand, a force applied to open the straw access opening tab 23 would not cause the primary dispensing opening to be opened. Accordingly, even the combination of references proposed fails to meet all of the limitations of applicants' claim 1.

For at least the reasons asserted above, applicants respectfully assert that claim 1 is not obvious over Fleming in view of Brooks, or over Fleming in view of Brooks and Kalajian.

Claims 2, 4 and 7 are allowable at least as ultimately depending from allowable base claim 1.

Claims 8, 9 and 11

Applicants' claim 8, as amended herein, recites the following:

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

A container comprising:
a body portion having at least one wall;
a dispensing opening;
a lid movably attached to said body portion;
wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container through said dispensing opening and a third re-closed condition;
wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;
wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall, thus leaving a hole in said at least one wall;
wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;
a sheet of material covering said hole while said container is in said second open condition;
wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;
wherein, said stationary portion is attached to said lid; and
wherein said at least a portion of said panel comprises said hinge portion.

Claim 8, as amended, recites, for example, the following:

a dispensing opening;

...

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container through said dispensing opening ...

wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall, thus leaving a hole in said at least one wall;

...

a sheet of material covering said hole while said container is in said second open condition;

As discussed above, the Examiner suggests that it would be obvious, in view of Brooks, to provide a sheet of material covering the Fleming opening.

Applicants' claim 8, however, now recites both a hole and a dispensing opening and that the hole is covered with a sheet of material "while said container is in said second open condition". Claim 1 further recites that the second open condition is one in which "product can be dispensed from said container through said dispensing opening".

The modification to Fleming suggested by the Examiner would result, at best, in a sheet of material covering the Fleming dispensing opening. In this condition, however, the Fleming container would not be in an "open condition" as defined in applicants' claim 8, i.e., a condition in which "product can be dispensed from said container through said dispensing opening".

Accordingly, the combination of references proposed by the Examiner

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

fails to meet all of the limitations of claim 8.

The Examiner asserts, in the alternative, that the further teaching of Kalajian can be applied to the combination of Fleming and Brooks discussed above to render applicants' claim 8 obvious. Applicants respectfully disagree with this position for at least the reasons set forth below.

The combination of the Fleming, Brooks and Kalajian references proposed by the Examiner would presumably result in a container as shown in Fleming having a sheet of material covering the dispensing opening and further having a secondary opening through which a straw can be inserted (as shown in Kalajian). As noted above, however, claim 8, as amended, recites the following:

wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall, thus leaving a hole in said at least one wall;

Claim 8, thus, recites that removal of the panel (which is attached to the lid) results in the hole in the wall. In the Kalajian device, on the other hand, there is no teaching or suggestion of a panel attached to the straw access opening tab 23 that results in formation of the primary dispensing opening. Accordingly, even the combination of references proposed fails to meet all of the limitations of applicants' claim 8.

For at least the reasons asserted above, applicants respectfully assert that claim 8 is not obvious over Fleming in view of Brooks, or over Fleming in view of Brooks and Kalajian.

Claims 9 and 11 are allowable at least as ultimately depending from

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

allowable base claim 8.

Applicants further respectfully assert that the Examiner's rejection of claims 1, 2, 4, 7-9 and 11 is improper in that there is no teaching or motivation to combine the Fleming and Brooks or the Fleming, Brooks and Kalajian references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

III. Rejection of Claims 1, 2, 4, 7-9 and 11 Under 35 U.S.C. §103(a)

Claims 1, 2, 4, 7-9 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Meyers (U.S. 4,284,197) in view of Niepmann (U.S. 2,434,756). Reexamination and reconsideration of the Examiner's rejection are requested.

Claim 1, as amended herein, recites the following:

A method of opening and closing a container, said method comprising:

providing said container comprising:

a body portion having at least one wall;

a dispensing opening;

a lid movably attached to said body portion;

a panel formed in said at least one wall of said body portion;

wherein said panel is attached to said lid;

moving said container to an open condition, in which product can be dispensed from said container through said dispensing opening, by applying an opening force to said lid, wherein said opening force causes said panel to separate from said at least one wall, thereby forming a hole in said at least one wall;

moving said container to a closed condition by applying a closing force to said lid;

releasably retaining said container in said closed condition by engaging at least a portion of said panel with at least a portion of said wall;

wherein said container further comprises a sheet of material covering said hole while said container is in said open condition;

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;
wherein, said stationary portion is attached to said lid; and
wherein, said engaging at least a portion of said panel with at least a portion of said wall comprises engaging said hinge portion with said at least a portion of said wall.

The Examiner states the following in paragraph 4 (page 3) of the Office action.

Meyers teaches a container with a lid, a panel 60a as shown in Figs. 7 and 8 comprising a stationary portion 60a and a hinge portion 108. Note that portion 108 is hinged to panel 26a about the fold line defined by 80a.

Applicants' claim 1, however, recites that the "panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line". In Meyers, the retaining tab 108a is not part of the ripout section 60a. This is clearly evident from an examination, e.g., of Fig. 7 in Meyers.

Applicants' claim 1 further recites the following:

releasably retaining said container in said closed condition by engaging at least a portion of said panel with at least a portion of said wall;

In Meyers, the cover 24a is retained in a closed condition by interaction between the retaining tabs 108a, 110a and the surfaces 116a and

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

122a, respectively, e.g., Figs. 7 and 8. The ripout section 60a plays no part in retaining the Meyers container in a closed condition. See Meyers, e.g., at col. 4, line 56 - col. 5, line 1.

Meyers, thus, fails to disclose or suggest all of the limitations of applicants' claim 1. Further, Niepmann does nothing to remedy the inadequacies of Meyers, as discussed above. Accordingly, a *prima facie* case of obviousness has not been established.

Claims 2, 4 and 7 are allowable at least as ultimately depending from allowable base claim 1.

Claims 8, 9 and 11

Applicants' claim 8, as amended herein, recites the following:

A container comprising:
a body portion having at least one wall;
a dispensing opening;
a lid movably attached to said body portion;
wherein said container includes a first condition before said container has initially been opened, a second open condition in which product can be dispensed from said container through said dispensing opening and a third re-closed condition;
wherein, in said first condition, a panel is attached to both said at least one wall of said body portion and said lid;
wherein in said second condition, said panel remains attached to said lid but has been removed from said at least one wall, thus leaving a hole in said at least one wall;

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;

a sheet of material covering said hole while said container is in said second open condition;

wherein, said panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line;

wherein, said stationary portion is attached to said lid; and

wherein said at least a portion of said panel comprises said hinge portion.

As noted above, the Examiner states the following in paragraph 4 (page 3) of the Office action.

Meyers teaches a container with a lid, a panel 60a as shown in Figs. 7 and 8 comprising a stationary portion 60a and a hinge portion 108. Note that portion 108 is hinged to panel 26a about the fold line defined by 80a.

Applicants' claim 8, however, recites that the "panel includes a stationary portion and a hinge portion separated from said stationary portion by a score line". In Meyers, the retaining tab 108a is not part of the ripout section 60a. This is clearly evident from an examination, e.g., of Fig. 7 in Meyers.

Applicants' claim 8 further recites the following:

wherein, in said third condition, at least a portion of said panel is releasably engaged with at least a portion of said wall;

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

In Meyers, the cover 24a is retained in a closed condition by interaction between the retaining tabs 108a, 110a and the surfaces 116a and 122a, respectively, e.g., Figs. 7 and 8. The ripout section 60a does not engage with the front panel 26a after the container is initially opened.

Meyers, thus, fails to disclose or suggest all of the limitations of applicants' claim 8. Further, Niepmann does nothing to remedy the inadequacies of Meyers, as discussed above. Accordingly, a *prima facie* case of obviousness has not been established.

Claims 9 and 11 are allowable at least as ultimately depending from allowable base claim 8.

Applicants further respectfully assert that the Examiner's rejection of claims 1, 2, 4, 7-9 and 11 is improper in that there is no teaching or motivation to combine the Meyers and Niepmann references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

IV. Rejection of Claims 28, 29, 31 and 32 Under 35 U.S.C. 103(a)

Claims 28, 29, 31 and 32 stand rejected under 35 U.S.C. §103(a) as being unpatentable over either Froom (U.S. 4,431,120) or Stone (U.S. 5,314,114) in view of Hodapp (U.S. 3,146,936). Reexamination and reconsideration of the Examiner's rejection are requested.

Claims 28 and 29

Applicants' claim 28 recites the following:

A container capable of moving between a closed condition and an open condition, said container comprising:

a first wall;

a second wall parallel to said first wall and spaced a first distance from said first wall;

a third wall transverse to said first and second walls, said third wall extending between said first and second walls such that said third wall has a width equal to said first distance;

a fourth wall transverse to both said first and second walls and to said third wall, said fourth wall extending between said first and second walls such that said fourth wall has a width equal to said first distance;

a lid movably attached to said third wall;

said lid having a width equal to said first distance;

a panel formed in said fourth wall, said panel being movably attached to said lid;

wherein in said open condition, said panel remains movably attached to said lid but has been removed from said fourth wall;

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

wherein, in said closed condition, at least a portion of said panel is engaged with at least a portion of said fourth wall.

The Examiner states the following in paragraph 5 (page 4) of the Office action.

Either Stone or Froom meets all claimed limitations except for the lid movably attached to the third wall.

Applicants respectfully disagree with the Examiner's stated position. It is pointed out, for example, that applicants' claim 28 recites the following:

a panel formed in said fourth wall, said panel being movably attached to said lid;

wherein in said open condition, said panel remains movably attached to said lid but has been removed from said fourth wall;

Fig. 15 of Froom, for example, shows the container in an open condition. As can clearly be seen from Fig. 15, there is no panel "movably attached" to the Froom lid as recited in applicants' claim 28.

Fig. 2 of Stone, for example, shows the Stone container in an open condition. Once again, there is no panel "movably attached" to the Stone lid as recited in applicants' claim 28.

Hodapp clearly neither discloses nor suggests subject matter that would remedy the inadequacies of the Froom and Stone references as discussed above. Accordingly, applicants respectfully assert that the Examiner's rejection is improper.

Claim 29 is allowable at least as depending from allowable base claim

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

28.

Claims 31 and 32

Applicants' claim 31 recites the following:

A method comprising:

providing a container comprising:

a first wall;

a second wall parallel to said first wall and spaced a first distance from said first wall;

a third wall transverse to said first and second walls, said third wall extending between said first and second walls such that said third wall has a width equal to said first distance;

a fourth wall transverse to both said first and second walls and to said third wall, said fourth wall extending between said first and second walls such that said fourth wall has a width equal to said first distance;

a lid movably attached to said third wall;

said lid having a width equal to said first distance;

a panel formed in said fourth wall, said panel being movably attached to said lid;

moving said lid to an open condition by applying an opening force thereto, wherein said opening force causes said panel to separate from said fourth wall;

moving said lid to a closed condition by applying a closing force thereto, wherein said closing force causes at least a portion of said panel to engage with at least a portion of said fourth wall.

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

As noted above, the Examiner states the following in paragraph 5 (page 4) of the Office action.

Either Stone or Froom meets all claimed limitations except for the lid movably attached to the third wall.

Applicants respectfully disagree with the Examiner's stated position. It is pointed out that applicants' claim 31 recites, for example, the following:

a panel formed in said fourth wall, said panel being movably attached to said lid;

Fig. 15 of Froom, for example, shows the container in an open condition. As can clearly be seen from Fig. 15, there is no panel "movably attached" to the Froom lid as recited in applicants' claim 31.

Fig. 2 of Stone, for example, shows the Stone container in an open condition. Once again, there is no panel "movably attached" to the Stone lid as recited in applicants' claim 31.

Hodapp clearly neither discloses nor suggests subject matter that would remedy the inadequacies of the Froom and Stone references as discussed above. Accordingly, applicants respectfully assert that the Examiner's rejection is improper.

Claim 32 is allowable at least as depending from allowable base claim 31.

Applicants further respectfully assert that the Examiner's rejection of claims 28, 29, 31 and 32 is improper in that there is no teaching or motivation to combine the Froom and Hodapp or the Stone and Hodapp

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

V. Rejection of Claims 14-18 and 28-33 Under 35 U.S.C. §102(b) or 35 U.S.C. §103(a)

Claims 14-18 and 28-33 stand rejected under 35 U.S.C. §102(b) as being anticipated by Rossi (U.S. 3,133,689) or, in the alternative, under 35 U.S.C. §103(a) as being obvious over Rossi in view of Fleming (U.S. 2,583,211). Reexamination and reconsideration of the Examiner's rejection are requested.

Claims 14-16

Applicants' claim 14 recites the following:

A method of opening and closing a container, said method comprising:

- providing said container comprising:
 - a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;
 - a lid movably attached to said first wall;
 - a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;
- moving said lid to an open position by applying an opening force thereto, wherein said opening force causes said hinge portion to separate from said second wall, thereby forming a hole in said second wall;
- moving said lid to a closed position by applying a closing force thereto; and
- releasably retaining said lid in said closed position by engaging at least a portion of said hinge portion with at least a portion of said

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

second wall.

In paragraph 6 of the Office action (page 4), the Examiner takes the position that the wall panel 17, the flap 37 and the locking tab 51 of Rossi are a "second wall", a "lid" and a "hinge portion", respectively, as recited in applicants' claim 14. Claim 14, however, recites, for example, the following:

**a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;
moving said lid to an open position by applying an opening force thereto, wherein said opening force causes said hinge portion to separate from said second wall, thereby forming a hole in said second wall;**

The Rossi locking tab 51 is not "formed in" the wall panel 17; whereas applicant's claim 14 requires that the hinge portion be "formed in" the second wall. The Rossi locking tab 51 appears to be formed in the flap 37 (see, e.g., Fig. 8 of Rossi).

Further, when the Rossi flap 37 is opened, movement of the locking tab 51 (which is attached to the flap 37) does not form "a hole in" the wall panel 17 as recited in claim 14.

Accordingly, claim 14 is not anticipated by Rossi. The standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

With respect to the Examiner's proposed combination of Rossi and Fleming, it is pointed out that Fleming does nothing to remedy the

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

inadequacies of Rossi, as discussed above. Accordingly, a *prima facie* case of obviousness has not been established.

Claims 15 and 16 are allowable at least as ultimately depending from allowable base claim 14.

Claims 17 and 18

Applicants' claim 17 recites the following

A container capable of moving between an open condition and a closed condition, said container comprising:

a body portion having at least a first wall and a second wall, said first wall being transverse to said second wall;

a lid movably attached to said first wall;

a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;

wherein in said open condition, said hinge portion remains movably attached to said lid but has been removed from said second wall, thus leaving a hole in said second wall;

wherein, in said closed condition, at least a portion of said hinge portion is engaged with at least a portion of said second wall; and

wherein said hinge portion is movably attached to a stationary portion via a score line and wherein said stationary portion is attached to said lid.

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

Claim 17 recites the following:

a hinge portion formed in said second wall, said hinge portion being movably attached to said lid;

wherein in said open condition, said hinge portion remains movably attached to said lid but has been removed from said second wall, thus leaving a hole in said second wall;

Claim 17, thus, is allowable for at least the same reasons as advanced above with respect to independent claim 14.

Claim 18 is allowable at least as depending from allowable base claim 17.

Claims 28-30

Applicants' claim 28 recites the following:

A container capable of moving between a closed condition and an open condition, said container comprising:

a first wall;

a second wall parallel to said first wall and spaced a first distance from said first wall;

a third wall transverse to said first and second walls, said third wall extending between said first and second walls such that said third wall has a width equal to said first distance;

a fourth wall transverse to both said first and second walls and to said third wall, said fourth wall extending between said first and

S.N. 09/072,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

second walls such that said fourth wall has a width equal to said first distance;

a lid movably attached to said third wall;

said lid having a width equal to said first distance;

a panel formed in said fourth wall, said panel being movably attached to said lid;

wherein in said open condition, said panel remains movably attached to said lid but has been removed from said fourth wall;

wherein, in said closed condition, at least a portion of said panel is engaged with at least a portion of said fourth wall.

In paragraph 6 of the Office action (page 4), the Examiner apparently takes the position that the wall panel 17, the flap 37 and the locking tab 51 of Rossi are a "fourth wall", a "lid" and a "panel", respectively, as recited in applicants' claim 28. Claim 28, however, recites, for example, the following:

a panel formed in said fourth wall, said panel being movably attached to said lid;

wherein in said open condition, said panel remains movably attached to said lid but has been removed from said fourth wall;

The Rossi locking tab 51 is not "formed in" the wall panel 17; whereas applicants' claim 28 requires that the "panel be formed in" the fourth wall. The Rossi locking tab 51 appears to be formed in the flap 37 (see, e.g., Fig. 8 of Rossi).

Further, as follows from the above, the Rossi flap 37 is not "removed from" the fourth wall as also recited in claim 28.

Accordingly, claim 28 is not anticipated by Rossi. The standard for

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

With respect to the Examiner's proposed combination of Rossi and Fleming, it is pointed out that Fleming does nothing to remedy the inadequacies of Rossi, as discussed above. Accordingly, a *prima facie* case of obviousness has not been established.

Claims 29 and 30 are allowable at least as ultimately depending from allowable base claim 28.

Claims 31-33

Applicants' claim 31 recites the following:

A method comprising:

providing a container comprising:

a first wall;

a second wall parallel to said first wall and spaced a first distance from said first wall;

a third wall transverse to said first and second walls, said third wall extending between said first and second walls such that said third wall has a width equal to said first distance;

a fourth wall transverse to both said first and second walls and to said third wall, said fourth wall extending between said first and second walls such that said fourth wall has a width equal to said first distance;

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

a lid movably attached to said third wall;
said lid having a width equal to said first distance;
a panel formed in said fourth wall, said panel being
movably attached to said lid;
moving said lid to an open condition by applying an opening
force thereto, wherein said opening force causes said panel to
separate from said fourth wall;
moving said lid to a closed condition by applying a closing force
thereto, wherein said closing force causes at least a portion of said
panel to engage with at least a portion of said fourth wall.

In paragraph 6 of the Office action (page 4), the Examiner apparently takes the position that the wall panel 17, the flap 37 and the locking tab 51 of Rossi are a "fourth wall", a "lid" and a "panel", respectively, as recited in applicants' claim 31. Claim 31, however, recites, for example, the following:

**a panel formed in said fourth wall, said panel being
movably attached to said lid;
moving said lid to an open condition by applying an opening
force thereto, wherein said opening force causes said panel to
separate from said fourth wall;**

The Rossi locking tab 51 is not "formed in" the wall panel 17; whereas applicant's claim 28 requires that the "panel be formed in" the fourth wall. The Rossi locking tab 51 appears to be formed in the flap 37 (see, e.g., Fig. 8 of Rossi).

Further, as follows from the above, the Rossi flap 37 is not "removed from" the fourth wall as also recited in claim 28.

Accordingly, claim 28 is not anticipated by Rossi. The standard for

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

lack of novelty, that is, for "anticipation," under 35 U.S.C. 102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986).

With respect to the Examiner's proposed combination of Rossi and Fleming, it is pointed out that Fleming does nothing to remedy the inadequacies of Rossi, as discussed above. Accordingly, a *prima facie* case of obviousness has not been established.

Claims 32 and 33 are allowable at least as ultimately depending from allowable base claim 28.

Applicants further respectfully assert that the Examiner's obviousness rejection of claims 14-18 and 28-33 is improper in that there is no teaching or motivation to combine the Rossi and Fleming references as proposed by the Examiner. "It is insufficient to establish obviousness that the separate elements of the invention existed in the prior art, absent some teaching or suggestion, in the prior art, to combine the elements." *Arkie Lures, Inc. v. Gene Larew Tackle, Inc.*, 119 F.3d 953, 957, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997).

S.N. 09/972,575
Art Unit 3727
Atty Dkt PP5.78(a)CVL

VI. Claims 6 and 13

Claims 6 and 13, previously withdrawn from consideration by the Examiner, have been canceled herein, without prejudice or disclaimer with respect to applicants' right to re-present one or both of these claims in a later-filed application.

In view of the above, all of the claims are now believed to be in condition for allowance. Re-examination and reconsideration are requested.

Respectfully submitted,

KLAAS, LAW, O'MEARA & MALKIN, P.C.

By 

Michael A. Goodwin, Reg. No. 32,697
KLAAS, LAW, O'MEARA & MALKIN, P.C.
1999 Broadway, Suite 2225
Denver, CO 80202
Telephone: (303) 298-9888
Fax: (303) 297-2266
Date: March 30, 2004